

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIMOTHY MITCHELL,
Plaintiff,

v.

DEVON BELL,
Defendant.

No. 2:20-cv-2132-EFB P

ORDER

Plaintiff is a county jail inmate proceeding without counsel in an action brought under 42 U.S.C. § 1983. He has filed an application to proceed in forma pauperis. ECF No. 5. For the reasons stated hereafter, his application is granted but his complaint must be dismissed with leave to amend.

Application to Proceed In Forma Pauperis

Plaintiff's application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

Screening Standards

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The

1 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
2 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
3 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

4 A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.”
5 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th
6 Cir. 1984). “[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
7 meritless legal theories or whose factual contentions are clearly baseless.” *Jackson v. Arizona*,
8 885 F.2d 639, 640 (9th Cir. 1989) (citation and internal quotations omitted), *superseded by statute*
9 *on other grounds as stated in Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000); *Neitzke*, 490
10 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded,
11 has an arguable legal and factual basis. *Id.*

12 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the
13 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of
14 what the . . . claim is and the grounds upon which it rests.’” *Bell Atl. Corp. v. Twombly*, 550 U.S.
15 544, 555 (2007) (alteration in original) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).
16 However, in order to survive dismissal for failure to state a claim, a complaint must contain more
17 than “a formulaic recitation of the elements of a cause of action;” it must contain factual
18 allegations sufficient “to raise a right to relief above the speculative level.” *Id.* (citations
19 omitted). “[T]he pleading must contain something more . . . than . . . a statement of facts that
20 merely creates a suspicion [of] a legally cognizable right of action.” *Id.* (alteration in original)
21 (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1216 (3d
22 ed. 2004)).

23 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
24 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
25 *Corp.*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content
26 that allows the court to draw the reasonable inference that the defendant is liable for the
27 misconduct alleged.” *Id.* (citing *Bell Atl. Corp.*, 550 U.S. at 556). In reviewing a complaint
28 under this standard, the court must accept as true the allegations of the complaint in question,

1 *Hospital Bldg. Co. v. Rex Hosp. Trs.*, 425 U.S. 738, 740 (1976), as well as construe the pleading
 2 in the light most favorable to the plaintiff and resolve all doubts in the plaintiff's favor, *Jenkins v.*
 3 *McKeithen*, 395 U.S. 411, 421 (1969).

4 Screening Order

5 In his amended complaint (ECF No. 6), which supercedes his original complaint (ECF
 6 No. 1), plaintiff alleges he has been confined to the Placer County Jail since May 5, 2020. He
 7 claims that on May 21, 2020, unnamed jail officials knowingly housed plaintiff with an inmate
 8 who had informed the officers that he had been infected with COVID-19. On June 1, 2020,
 9 plaintiff was tested for COVID-19 and the results came back positive. Plaintiff was then
 10 quarantined but did not receive any treatment to manage his headaches. Plaintiff alleges that he
 11 continues to experience migraines and shortness of breath. Plaintiff claims that his infection was
 12 the result of "clear negligence" and names Sheriff Devon Bell as defendant. ECF No. 6 at 3. For
 13 the reasons stated below, plaintiff's amended complaint is dismissed with leave to amend.

14 There are two defects in plaintiff's first amended complaint. First, he has not linked
 15 defendant Bell to any violation of his rights. If plaintiff intends to sue defendant Bell personally,
 16 he must allege what Bell personally did or did not do that violated plaintiff's rights. Plaintiff has
 17 not done so. If, on the other hand, plaintiff means to sue Placer County as a municipality, he must
 18 show that his COVID-19 infection and/or lack of medical treatment was caused by jail employees
 19 acting pursuant to a policy or custom of the County, and he must identify such policy or custom.
 20 *Mt. Healthy City Sch. Dist. Bd. of Ed. v. Doyle*, 429 U.S. 274, 280 (1977); *Monell v. New York*
 21 *City Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978); *Villegas v. Gilroy Garlic Festival Ass'n*, 541
 22 F.3d 950, 964 (9th Cir. 2008). Second, plaintiff attributes his infection to "clear negligence."
 23 ECF No. 6 at 3. However, a jail official only violates the Eighth Amendment's proscription of
 24 cruel and unusual punishment where he or she acts with a "sufficiently culpable state of mind."
 25 *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). A showing of negligence or gross negligence is
 26 not sufficient. *Id.* at 835-36; *Wood v. Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990). Rather,
 27 a prisoner must show that the defendant acted with "deliberate indifference" to his health or
 28 safety. *Farmer*, 511 U.S. at 834.

1 The court will grant leave to amend so that plaintiff may articulate his claims with greater
2 detail and specificity.

3 Leave to Amend

4 Plaintiff is cautioned that any amended complaint must identify as a defendant only
5 persons who personally participated in a substantial way in depriving him of his constitutional
6 rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the
7 deprivation of a constitutional right if he does an act, participates in another's act or omits to
8 perform an act he is legally required to do that causes the alleged deprivation). Plaintiff may also
9 include any allegations based on state law that are so closely related to his federal allegations that
10 "they form the same case or controversy." *See* 28 U.S.C. § 1367(a).

11 The amended complaint must also contain a caption including the names of all defendants.
12 Fed. R. Civ. P. 10(a).

13 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *See*
14 *George v. Smith*, 507 F.3d 605 at 607.

15 Any amended complaint must be written or typed so that it so that it is complete in itself
16 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
17 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
18 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
19 F.3d 1467, 1474 (9th Cir. 1997) (the "amended complaint supersedes the original, the latter
20 being treated thereafter as non-existent.") (*quoting Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
21 1967)).


22 Any amended complaint should be as concise as possible in fulfilling the above
23 requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of procedural or factual
24 background which has no bearing on his legal claims. He should also take pains to ensure that his
25 amended complaint is as legible as possible. This refers not only to penmanship, but also spacing
26 and organization. Plaintiff should carefully consider whether each of the defendants he names
27 actually had involvement in the constitutional violations he alleges. A "scattershot" approach in
28 which plaintiff names dozens of defendants will not be looked upon favorably by the court.

Conclusion

Accordingly, it is ORDERED that:

1. Plaintiff's application to proceed in forma pauperis (ECF No. 2) is GRANTED;
2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in accordance with the notice to the Placer County Sheriff filed concurrently herewith;
3. Plaintiff's amended complaint (ECF No. 6) is dismissed with leave to amend within 30 days from the date of service of this order; and
4. Failure to file an amended complaint that complies with this order may result in the dismissal of this action for the reasons stated herein.

DATED: December 16, 2020.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE